

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	
Amendment of Section 73.202(b),	)	MB Docket No. 04-258
Table of Allotments,	)	RM-11000
FM Broadcast Stations.	)	
(Levan and Richfield, Utah)	)	

**NOTICE OF PROPOSED RULEMAKING  
AND ORDER TO SHOW CAUSE**

**Adopted: July 14, 2004**

**Released: July 20, 2004**

**Comment Date: September 13, 2004**

**Reply Comment Date: September 28, 2004**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rulemaking filed by Micro Communications, Inc. ("Petitioner"), licensee of Station KCFM(FM), Channel 244C, Levan, Utah, proposing to substitute Channel 229C for Channel 244C at Levan and modify the license for Station KCFM accordingly. To accommodate its proposal, Petitioner proposes to substitute Channel 244C for Channel 229C at Richfield, Utah, and modify the license of Station KCYQ(FM) accordingly. Petitioner states that if granted, it will file an application for and construct the facilities on the requested channel.

2. In support of its proposal, Petitioner states that the reallocations it proposes will result in a preferential arrangement of allotments. It claims that there will be no change in the service to be rendered by Station KCYQ, and it would allow the station to operate at its facility proposed in File No. BPH-20030304AAQ. On the other hand, it claims that if Station KCFM is modified to Channel 229C, it would reach 408,696 persons within the 60dBu contour, a net population gain of 266,360 persons. It also notes that there will be 28,813 persons in the loss area, all of whom will remain well served with five or more reception services, and that some of the persons in the gain area will receive their fifth reception service. Petitioner also claims that Station KCFM will be able to continue its current coverage of Levan on the proposed channel.

3. Petitioner states that it has searched for alternate channels to accomplish its power increase and has found no others. Since Petitioner has not submitted an agreement showing that the licensee of Station KCYQ has consented to the channel swap, it is necessary to include an *Order to Show Cause* directed to Mid-Utah Radio, Inc., to show cause why its Station KCYQ(FM) authorization should not be modified to specify operation on Channel 244C in lieu of Channel 229C at Richfield. Section 316(a) of the Communications Act of 1934, as amended, permits us to modify a license or construction permit if such action is in the public interest. Section 316(a) requires that we notify the affected stations of the proposed action, the public interest reasons for the action, and afford at least 30 days to respond. This procedure is now set forth in Section 1.87 of the Commission's Rules.<sup>1</sup> In this instance, the substitution

<sup>1</sup> See *Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act*, 2 FCC Rcd 3327 (1987).

of Channel 244C for Channel 229C at Richfield, Utah, will accommodate the substitution of Channel 229C for Channel 244C at Levan, Utah. We consider this change in channels for Station KCYQ, Richfield, Utah, to have sufficient public interest benefits to justify the issuance of a show cause order

4. Whenever an existing licensee is ordered to switch frequencies to accommodate a channel allotment, we require the proponent of the channel allotment to make a commitment to reimburse the affected station for the costs incurred in changing frequencies.<sup>2</sup> Petitioner has not acknowledged its responsibility to reimburse Station KCYQ for its reasonable costs in changing frequency. In comments, Petitioner is to make a reimbursement commitment to the licensee of Station KCYQ's licensee for changing its channel.

5. We believe the proposed channel changes warrant consideration since they could allow Station KCFM to expand its coverage area. However, our engineering analysis shows that the site proposed by Petitioner for Channel 229C at Levan appears to be blocked by a significant physical obstruction which may prevent the community from receiving the required 70dBu contour from this site. Accordingly, we are proposing the allotment at the city center coordinates.<sup>3</sup> In its comments, Petitioner is to address the population gains and losses at this proposed site, and compare those to its claims regarding its original site. If it intends to use the original site, Petitioner is to address our findings regarding the terrain obstruction and city-grade coverage to Levan. Channel 244C can be allotted at Richfield at Station KCYQ's cite as authorized in File No. BPH-20030304AAQ.<sup>4</sup> Because Channels 229C and 244C are equivalent class channels, we will not accept competing expressions of interest.<sup>5</sup>

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u> <u>Present</u>	<u>Proposed</u>
Levan, Utah	244C	229C
Richfield, Utah	229C	244C

7. Pursuant to Section 1.87 of the Commission's Rules, Mid-Utah Radio, Inc., may, no later than August 30, 2004, file a written statement showing with particularity why its construction permit should not be modified as proposed in this *Notice of Proposed Rule Making and Order to Show Cause*. The Commission may call upon the licensee to furnish additional information. If the licensee raises any substantial and material questions of fact, a hearing may be required to resolve such questions of fact pursuant to Section 1.87 of the Rules. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, the licensee will be

<sup>2</sup> See *Circleville, Ohio*, 8 FCC 2d 159 (1967).

<sup>3</sup> The coordinates for Channel 229C at Levan are 39-33-31 NL and 111-51-40 WL.

<sup>4</sup> The coordinates for Channel 244C at Richfield are 39-19-17NL and 111-46-11 WL. Our analysis shows that this site is short-spaced to Station KHIX(FM), Channel 244C1, Ely, NV, which Petitioner states is in the database in error, because that station has changed community to Carlin, Nevada, and upgraded to Channel 244C. See *Ely and Carlin, Nevada*, 14 FCC Rcd 7035 (1999).

<sup>5</sup> See *Stamping Ground and Nicholasville, Kentucky*, 11 FCC Rcd 13180, 13181 (MMB 1996) ("... the procedures outlined in *Modification of FM and TV Licenses*, 98 FCC 2d 916 (1984) and Section 1.420(g) do not apply here since no change in the class of the channel is involved"). See also *Reynoldsville, Pennsylvania*, 11 FCC Rcd 12715, 12716 (MMB 1996); and *De Ridder, Louisiana*, 13 FCC Rcd 22812 (MMB 1998).

deemed to have consented to a modification as proposed in this *Notice of Proposed Rule Making and Order to Show Cause* and a final Order will be issued if the modification is found to be in the public interest.

6. IT IS FURTHER ORDERED, that a copy of this *Notice of Proposed Rule Making and Order to Show Cause* shall be sent BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the following:

Mid-Utah Radio, Inc.  
P.O. Box 40  
Manti, Utah 84642  
(Licensee of Station KCYQ(FM))

Shelley Sadowski, Esq.  
Katten Muchin Zavis Rosenman  
1025 Thomas Jefferson Street, NW  
East Lobby , Suite 700  
Washington, DC 20007-5201  
(Counsel to Mid-Utah Radio, Inc.)

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before September 13, 2004, and reply comments on or before September 28, 2004 and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the Petitioner, or its counsel or consultant, as follows:

Peter Gutmann, Esq.  
Womble, Carlyle, Sandridge, & Rice, PLLC  
1401 I Street, NW  
Seventh Floor  
Washington, DC 20005

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.<sup>6</sup>

11. For further information concerning this proceeding, contact Victoria M. McCauley, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not

---

<sup>6</sup> See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rulemaking* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rulemaking* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off protection.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rulemaking* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room TW-A325, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Information Reference Center (Room CY-A257) at its headquarters, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.